

General Service Conditions of KACO new energy GmbH

1 Scope of Terms and Conditions

- 1.1 These General Terms and Conditions for Service Orders (GSC) are forming an integral part of each contract concluded between us and a customer with respect to technical services rendered (e.g. repair and rework of technical products, servicing by means of inspection, maintenance and improvements of technical products), as well as for the provision of information and consultation in this context.
- 1.2 The inclusion of any other and contradictory terms on Customer's side shall be explicitly denied. Any side agreements, assurances and/or amendments to these Terms and Conditions shall only be binding if confirmed by us expressly in writing.
- 1.3 Towards companies and legal entities under public law, these GSC shall also be valid with respect to all future business relations.
- 1.4 These Terms and Conditions shall also be applicable to service work which is subject to separate service agreements. However, the contractual agreements made in each individual case shall be given preference.

2 Contractual Basis

- 2.1 The contractual success, i.e. the proper and professional execution of a Customer order - shall exclusively be owed under the conditions stated below:
 - The respective product is installed, operated, used and maintained according to its intended purpose and according to the supplied manual and other documentation
 - The product is operated (as far as applicable) by using our original parts and software or, respectively, by means of parts of the same quality
 - The product is operated under the environmental and site conditions described in the product manual.
- 2.2 All maintenance work – except for routine maintenance conducted by Customer – shall be executed by authorized customer service representatives, thereby excluding any intervention by third parties.
- 2.3 We shall not bear any risk of procurement for spare parts within the scope of a service order.
- 2.4 All maintenance work, except for routine maintenance conducted by Customer, shall be executed by our service technicians (or assigned partners/representatives), thereby excluding any interventions by third parties.

3 Temporal Fulfillment of the Contract/Execution of Services / Exchanged Parts

- 3.1 Our services will be rendered within a reasonable period of time, thereby taking into account the availability of spare parts and personnel.
- 3.2 In the event that repair work should have to be carried out on-site at Customer's premises, we shall notify Customer of the service date within a reasonable period of time. If the date advised cannot be accepted by Customer and a new date has to be fixed, Customer shall inform us immediately after having been notified by us.
- 3.3 Should the scheduled date for executing the work not be possible, Customer will be notified in due time.
- 3.4 Unless otherwise agreed in writing, on-site service work shall be executed during normal business hours from Monday to Friday between 8.00 am and 5.00 pm. This excludes legal and local holidays as well as the period between 24th December and 31st December of each year. No service work shall be executed on these days.
- 3.5 Inquiries for service work shall be made via the online form on our homepage (<https://service.kaco-newenergy.com/nc/en/customer-service/>). The Contract shall become effective with our order confirmation or with the provision or acceptance of the services.
- 3.6 Upon the completion of the service work, the service technician will issue a service report, which has to be signed by Customer in order to confirm the work executed, in so far as it is reflected in the service report.
- 3.7 All parts dismantled by us (or, respectively, by our assigned partners/representatives), hereinafter referred to as "replacement parts", which have been replaced with other parts, shall pass into our ownership. Should such replacement parts be required for insurance matters (assessment by expert's opinion), this shall be advised to us within 10 work days after replacement. We reserve the right to hold replaced parts available for the purpose of assessment by insurance companies, court experts and authorities. Should we not have received a respective notification within 10 work days, we reserve the right to dispose of such replacement parts.

4 Service Requirements for the Execution of On-Site Work / Access to the Service Object

- 4.1 Customer shall grant us free access to the products for executing the service work at the agreed times. Customer shall be liable for proper and safe access and proper and safe condition of the workplace.

- 4.2 Each service call requires the presence of a responsible signatory on the Customer's premises. If this is not the case, we (or, respectively, our assigned partner/representative) shall leave the plant at Customer's/Principal's expenses.
- 4.3 Should a service call be unnecessarily impeded due to Customer's insufficient information on the PV plant (e.g. lacking information on required tools and equipment, especially hoisting platforms, hoisting winches, hoisting crane, etc.), we may abort the service call. In this case, we shall be entitled to compensation for such service call at our generally applicable rates of remuneration. Should Customer not know our general rates of remuneration, we shall submit such rates immediately to Customer upon request.
- 4.4 Any faults or defects claimed by Customer, which we are not accountable for and which do not represent a guarantee or warranty case for us, shall also be invoiced to Customer.
- 4.5 Should the responsible signatory insist on direct on-site repair, such repair shall only be carried out against his/her signature on the protocol. The protocol states the expected costs, and it is pointed out that these costs may deviate from the actual costs.

5 Other Obligations to Cooperate on Customer's Side

- 5.1 Customer shall be responsible for creating all the required technical and organizational conditions within Customer's sphere of influence. Customer shall also be responsible for creating the required conditions for occupational safety and health, thus enabling us to render the contractual services completely and in accordance with this contract. Customer shall support us adequately in executing the agreed services. In particular, Customer shall provide the required information, access to facilities (also for vans up to 3.5 tons), supply lines and consumables as well as all required utilities (especially hoisting platforms, hoisting winches, hoisting crane, etc.) free of charge.
- 5.2 Customer shall be responsible for the functionality of communication lines to the respective products at all times and especially during a service call. Our online access to the products has to be ensured.
- 5.3 Upon our first request, Customer shall also allow insight into the technical documents in his possession, which refer to the respective products and which are relevant and required in connection with the service call.
- 5.4 Customer shall be obligated to ensure regular backup copies of data and programs at adequate intervals for each application and before sending the products.

6 Delay/Postponement or Interruption of Services; Delay in Performance

- 6.1 Should the execution of our services be delayed due to circumstances which Customer is accountable for, Customer shall bear the costs incurred due to such delay. This refers, in particular, to the waiting times of deployed staff members and/or repeated travel or accommodation costs, whichever happens to be more favorable.
- 6.2 The aforementioned clause 6.1 shall also be applicable if services cannot be rendered or have to be delayed due to lacking cooperation by Customer. This refers, in particular, to insufficient and/or faulty information about the plant (e.g. lacking information or lacking provision of utilities, especially hoisting platforms, hoisting winches, hoisting crane, etc.).

7 Additional Work, Spare Parts

- 7.1 The work to be executed by us results from the agreed scope of work and, for lack of such, according to reasonable discretion, from the requirements stated by us or by our assigned partners/representatives. Any work beyond the agreed scope of services shall be charged additionally with Customer's consent according to its nature, scope, time and incidental costs and according to our general rates of remuneration. Should Customer not know our general rates of remuneration, these rates shall be communicated to Customer immediately upon request.
- 7.2 The prices for required spare parts and services rendered shall be based on our applicable prices plus statutory VAT at the time of contract conclusion.

8 Notice of Defects, Warranty, Breach of Obligations

The following shall apply to contractual work and services:

- 8.1 Should we have rendered deficient service/performance, Customer shall give us an opportunity to provide subsequent performance within reasonable time periods, unless such subsequent performance is unreasonable for Customer in an individual case, or specific circumstances justify an immediate withdrawal from contract with consideration of the parties' mutual interests.
- 8.2 Claims for defects have to be asserted in writing by indicating all recognized defects and the circumstances under which such defects occurred.
- 8.3 A defect shall not exist if a defect declared by Customer is not reproducible. Should Customer have manipulated / interfered with the supplied components, hardware or software, Customer's claims for defects shall only be applicable if Customer can provide evidence that his manipulation/interference is not the root cause of such defect.

- 8.4 Should a defect declared by Customer not exist and, in particular, should a defect declared by Customer not be reproducible, we shall be entitled to request adequate compensation for our expenses unless Customer can be attributed slight negligence only and/or Customer can provide evidence that a defect actually occurred before the notice of defects. Kaco new energy GmbH reserves the right to charge additional expenses even in warranty cases. Our adequate compensation shall be based on our general rates of remuneration. Should Customer not know our general rates of remuneration, these rates shall be communicated to Customer immediately upon request.
- 8.5 If subsequent performance should fail or be denied by us, or if it should be unreasonable for Customer, Customer shall be entitled to other legal claims for defects as applicable (withdrawal from contract, reduction of contract price, self-performance, claim for damages or compensation for futile expenses). Claims for damages shall exclusively be applicable pursuant to clause 9. of these provisions.
- 8.6 If a defect should constitute an insignificant deviation from the agreed quality only, Customer shall be entitled, at our discretion, only to subsequent performance or reasonable reduction. If no (specific) quality has been agreed, the same shall apply to an insignificant deviation from the suitability for the use assumed in the contract (otherwise normal use), which is customary for goods of the same type or nature and which Customer may expect according to the goods' type or nature.

9 Liability

- 9.1 We shall only be liable in accordance with the following provisions:

We shall be generally liable for

- deliberate or grossly negligent actions
- each culpable breach of essential contractual obligations

- 9.2 In so far as we are liable in cases of simple negligence, our duty to compensate shall be limited an amount corresponding to the compensation for a contract-typical, foreseeable damage.
- 9.3 In other respects, our liability for property and financial damage shall be excluded.
- 9.4 Liability according to the Product Liability Act as well as liability for injury to life, limb and/or health shall be excluded from the limitation and exclusion of liability.

9.5 We shall be liable for the recovery of data only if Customer has ensured that lost data can be recovered with reasonable effort. Therefore, Customer shall be obligated to secure data and programs at adequate intervals for each application.

9.6 In so far as our liability for damages is excluded or limited according to the aforementioned provisions, this shall also be applicable to the personal liability of our officers, employees and other staff members, representatives and assignees, and shall also be applicable to all claims resulting from *culpa in contrahendo* (faults in contract negotiations), violation of secondary obligations and claims in tort (§§ 823 ff. German Civil Code). However, it shall not be applicable to claims pursuant to §§ 1, 4 ProdHaftG (*Product Liability Act*).

10 Statutes of Limitation

10.1 To the extent that Customer is an enterprise, Customer's claims shall expire one year from the beginning of the statutory limitation period. Claims pursuant to § 634a sub-para. 1 No. 2 BGB (*German Civil Code*) shall be excluded.

10.2 To the extent that Customer is an enterprise, any other contractual claims of Customer due to the breach of obligations, shall expire one year from the statutory limitation period.

10.3 The statutory limitation period shall remain unaffected by the aforementioned provisions in the following cases:

- damage to life, limb, or health;
- other damages which are based on intentional or grossly negligent breach of obligation by us, our legal representatives or assigned partners/representatives;
- Customer's right to withdraw from contract due to violation of duty to be attributed to us, which does not represent a defect of the sales item or work;
- claims arising from fraudulent concealing of a defect and from a warranty of quality pursuant to § 639 BGB (*German Civil Code*);

11 Prohibition of Assignment, Offsetting and Right of Retention

11.1 The assignment of claims which Customer is entitled to as a result of our business relationship shall be ruled out.

11.2 Customer shall only be entitled to offset and assert claims pursuant §§ 273, 320 BGB, if Customer's counterclaims are either undisputed or legally valid. Any mutual claims, in particular, claims for compensation of defects or claims for completion, shall be excluded thereof.

12 Force Majeure

- 12.1 In cases of force majeure, the affected contractual party shall be exempted from its performance or acceptance obligation for the duration and within the scope of the effects of such force majeure. Force majeure refers to each event or circumstance beyond the control of the respective party, impeding, in whole or in part, such party's fulfillment of obligations. Such incidents include damage due to fire, floods, strikes and lawful lockouts, as well as disruptions of operations not caused by the respective party, or official decrees. Supply and other performance difficulties shall only be deemed force majeure, if the upstream supplier has also been hindered in the performance of his obligations by an event or circumstance pursuant to clause 1
- 12.2 The affected party shall notify the other party immediately of the presence or absence of force majeure and use its best efforts to rectify such force majeure and restrict its effects as far as possible.
- 12.3 In cases of force majeure, the parties shall agree on the further proceeding and determine if performances not fulfilled during this period shall be fulfilled after the case of force majeure has ended. Irrespectively thereof, each party shall be entitled to withdraw from the affected contracts, if the period of force majeure has continued for more than two weeks from the agreed deadline. The right of each party to terminate the contract for good cause in the case of a continued case of force majeure shall remain unaffected.

13 Invoices

- 13.1 KACO new energy GmbH reserves the right to send invoices electronically to the e-mail address advised. Customer herewith waives classic postal delivery.
- 13.2 Customer has to take care on the receiving side that all electronic invoices sent by KACO new energy GmbH by e-mail can be delivered properly to the advised e-mail address; customer shall therefore appropriately adapt its technical equipment, e.g. filter programs or firewalls. Automated electronic reply mails to KACO new energy GmbH (e.g. out-of-office replies) cannot be taken into consideration and do not preclude the validity of the electronic delivery.
- 13.3 Customer shall notify KACO new energy GmbH immediately in the written and legally valid form of any changes of the e-mail address to which the invoice has to be sent. If Customer has failed to notify KACO new energy GmbH of a changed e-mail address, the last e-mail address communicated by Customer shall be used, and the mail shall be considered to be received by Customer.
- 13.4 KACO new energy GmbH shall not be liable for any damages resulting from the increased risk of electronic delivery as compared to postal delivery of an invoice. The increased risk of access by

unauthorized third parties, which is due to the storage of electronic invoices, shall be borne by Customer.

- 13.5 Customer may cancel/revoke participation in the electronic delivery of invoices by e-mail at any time. On receipt and handling of Customer's written notice of revocation, KACO new energy GmbH shall forthwith deliver invoices by post to Customer's last postal address advised to KACO new energy GmbH. KACO new energy GmbH reserves the right to charge an amount of € 5.00 as an additional fee for each invoice. If significant reasons should prevail (for good cause), KACO new energy GmbH reserves the right to change, without prior notification, from electronic invoices to postal delivery, thereby using the last postal address communicated.
- 13.6 The change in our General Terms and Conditions concerning electronic delivery of invoices by e-mail will be advised to Customer electronically by e-mail. This change shall become effective on expiration of 30 days after delivery and shall be deemed to be accepted, if customer does not revoke or cancel participation within this period of time pursuant to item 1.5. KACO new energy GmbH will notify Customer specifically of the changes in the Terms and Conditions and of the 30 days' period, the starting date of such period, and the consequences of Customer's actions.

14 Place of Jurisdiction/Miscellaneous

- 14.1 If the parties hereto are merchants, legal entities under public law or public special funds, or if at least one of the parties hereto should have no general place of jurisdiction in Germany, the sole place of jurisdiction - also for action in summary proceedings with documentary evidence and claims arising from a bill of exchange - shall be Heilbronn/Neckar. However, we shall also be entitled to bring action against Customer at Customer's registered domicile.
- 14.2 German law shall be exclusively applicable with the exclusion of UN purchasing law. This choice of law shall only be applicable to consumers in so far as mandatory applicable consumer protection rules of the state where the consumer's voluntary domicile is located at the time of order placement are not withdrawn thereby.
- 14.3 Any amendments to this contract require the written form. The revocation of the written form requirement also requires the written form. The priority of individually agreed terms - also in a verbal form - shall remain unaffected pursuant § 305b BGB (*German Civil Code*).